

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

SNAP-ON BUSINESS SOLUTIONS,)	CASE NO.: 5:07CV1961
INC.,)	
)	
Plaintiff,)	JUDGE JOHN ADAMS
)	
v.)	<u>ORDER AND DECISION</u>
)	
HYUNDAI MOTOR AMERICA)	(Resolving Doc. 38)
)	
)	
Defendant.)	
)	

This matter comes before the Court on a motion (Doc. 38) filed by Defendant Hyundai Motor America (“Hyundai”) seeking to strike portions of the complaint. The Court has been advised, having reviewed the motion, response, reply, and applicable law. For the reasons stated below, the motion is DENIED.

First, the motion to strike is improper under Fed.R. Civ.P. 12(g)(2) (prohibiting multiple rule 12 motions). The motion constitutes the second Rule 12 motion filed by Hyundai and does not fall within any of the exceptions to 12(g)(2) contained in Rule 12(h). The Court also questions the timeliness of the motion as it was filed nearly ten months after the first Rule 12 motion and nearly a year after the complaint was filed.

More importantly, the Court denies the motion as simply inapplicable to the pleading at issue. As even Hyundai’s motion recognizes, the statements contained in the complaint are not affirmative defenses. (“Hyundai moves to strike the *purported* defenses...” Doc. 38 at 5.). Indeed, as there was no claim pending against Snap-On when it filed the complaint, it is difficult to label anything in the complaint a “defense.”

Hyundai simply reads too much into the complaint. The complaint provides Snap-On's generic arguments in support of its request for declaratory relief. While Hyundai may believe that those arguments will ultimately be shown to lack merit, a motion to strike is not the proper vehicle to attack those arguments, nor is this litigation at the appropriate stage to review the merits of the arguments alleged by Snap-On.

The motion to strike is DENIED.

September 5, 2008
Date

/s/ Judge John R. Adams
JUDGE JOHN R. ADAMS
UNITED STATES DISTRICT COURT